

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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KENNETH FRIEDMAN,

Case No. 3:18-cv-00384-MMD-CLB

Plaintiff,

ORDER

v.

JAMES DZURENDA, *et al.*,

Defendants.

Pro se Plaintiff Kenneth Friedman brings this action under 42 U.S.C. § 1983. Before the Court is the Report and Recommendation (“R&R” or “Recommendation”) of United States Magistrate Judge Carla L. Baldwin (ECF No. 39), recommending the Court grant Defendants’ Motion for Summary Judgment (“Motion”) as to Defendant Rich Snyder and deny Defendants’ Motion as to all other Defendants. The parties had until November 5, 2020 to file an objection. To date, no objection to the R&R has been filed. For this reason, and as explained below, the Court adopts the R&R, and will grant in part and deny in part Defendants’ Motion.

The Court “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1). Where a party fails to object to a magistrate judge’s recommendation, the Court is not required to conduct “any review at all . . . of any issue that is not the subject of an objection.” *Thomas v. Arn*, 474 U.S. 140, 149 (1985); *see also United States v. Reyna-Tapia*, 328 F.3d 1114, 1116 (9th Cir. 2003) (“De novo review of the magistrate judges’ findings and recommendations is required if, but *only* if, one or both parties file objections to the findings and recommendations.”) (emphasis in original); Fed. R. Civ. P. 72, Advisory Committee Notes (1983) (providing that the Court “need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.”).

1 Because there is no objection, the Court need not conduct de novo review, and is
2 satisfied Judge Baldwin did not clearly err. Here, Judge Baldwin recommends first that
3 Defendant Brian Ward be dismissed from this case pursuant to Federal Rule of Civil
4 Procedure 4(m) for failure to file proper proof of service. (ECF No. 39 at 1, fn. 2.) Plaintiff
5 was required to provide proper proof of service by October 2, 2020, per the Court's notice
6 of intent to dismiss. (ECF No. 34.)

7 Judge Baldwin further recommends that Defendants' Motion be granted with
8 respect to Defendant Snyder and denied with respect to all remaining Defendants. (ECF
9 No. 39 at 15.) Because Plaintiff's "alleged facts do not show any [personal] participation
10 by Snyder," Plaintiff's § 1983 claim against him is legally insufficient. (*Id.* at 7.) However,
11 Plaintiff sufficiently alleged personal participation by remaining Defendants James
12 Dzurenda, Isidro Baca, Yisroel Rosskamm, and Lisa Walsh. (*Id.* at 5-7.) Further,
13 Defendants have failed to show that a jury could not find that Plaintiff's First Amendment
14 right to freely exercise his religion has been substantially burdened without legitimate
15 penological interests. (*Id.* at 7-12.) After applying the test in *Turner v. Safley*, 482 U.S. 78,
16 89 (1987), Judge Baldwin found that summary judgment would not be proper for Plaintiff's
17 First Amendment claim. (*Id.* at 12.) Further, because Defendants have failed to meet the
18 RLUIPA standard that NDOC prove its Common Fare Menu is the "least restrictive means
19 of furthering a compelling governmental interest," Judge Baldwin found a "triable issue of
20 material fact" for Plaintiff's RLUIPA claim. (*Id.* at 13.) Finally, Judge Baldwin determined
21 that Plaintiff's allegations are enough to establish a violation of a clearly established
22 constitutional right, so qualified immunity is not available. (*Id.* at 15.) The Court agrees
23 with Judge Baldwin. Having reviewed the R&R and the record in this case, the Court will
24 adopt the R&R in full.

25 It is therefore ordered that Judge Baldwin's Report and Recommendation (ECF
26 No. 39) is accepted and adopted in full.

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1 It is further ordered that Defendant Ward is dismissed pursuant to Federal Rule of
2 Civil Procedure 4(m).

3 It is further ordered that Defendants' motion for summary judgment (ECF No. 27)
4 is granted in part and denied in part. It is granted as to Defendant Snyder and denied as
5 to all remaining Defendants.

6 DATED THIS 17th Day of September 2020.

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10 MIRANDA M. DU
11 CHIEF UNITED STATES DISTRICT JUDGE
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